

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/02/2003

CORAM

THE HONOURABLE MR.JUSTICE A.PACKIARAJ

Crl.R.C.No. 1189 of 2000

and

Crl.M.P.No.8597 of 2000

P.Loganathan Petitioner

-Vs-

The Commissioner,

Udhagamandalam Municipality

Udhagamandalam, The Nilgiris. Respondent

Prayer: Revision against the order in Crl.M.P.No.2529 of 2000 in STR.No.3836 of 2000 on the file of the Judicial Magistrate Court, Udhagamandalam, dated 11.10.2000.

!For Petitioner : Mr.A.V.Illango

^For Respondent : Mr.Arul
(Government Advocate)

:ORDER

This revision has been filed against the orders passed by the Judicial Magistrate, Udhagamandalam in Crl.M.P.No.2529 of 2000, declining to drop the proceedings against the petitioner for offences under Sections 217 G and 217 J of the Tamil Nadu District Municipalities Act.

2. The brief facts of the case is that the petitioner has put up a construction in the second floor at Survey No.1680 at Door.No.2A in Princely

Palace without obtaining licence. Hence, a show cause notice dated 19.04.2000 was issued to him by the Commissioner (Executive Authority) of Udhagamandalam directing him to demolish the said construction, as he was not having the licence or in the alternative, if he fails to do so, the said construction will be demolished by the Municipality and the expenses have to be borne out by him. The petitioner though having resisted this had kept quiet and did not chose to reply and hence a complaint was filed in the Court of Judicial Magistrate, Udhagamandalam by the Commissioner, Udhagamandalam Municipality after obtaining the sanction of prosecution for offences under Sections 217-G and 217-J.

3. The learned counsel for the petitioner had sought for discharge on the ground that the Municipal Commissioner had no jurisdiction to issue the notice and consequently, the action taken by the Commissioner has no legal sanction and hence the entire proceeding is vitiated. Since the same did not find favour before the court below, the petitioner has come by way of revision before this Court.

4. The learned counsel for the petitioner reiterated the same argument and according to him the Tamil Nadu District Municipalities Act came to be amended in the year 1988 by virtue of the Act 10 of 1988, wherein Section 217-D has been introduced which states that the Executive Authority (The Commissioner) has power to grant licence for construction or reconstruction of any original building within the area of Hill station having not exceeding 250 Square metres in the ground floor or not exceeding 250 square metres in the ground and first floor in aggregate and according to the show cause notice issued by the Commissioner, the said construction is on the second floor and as such he has no power to grant licence and if it exceeds 250 square metres. In the present case, the construction is to the extent of

34 x 10 + feet which is more than 250 square metres and consequently according to the counsel, the local authority (The Commissioner) has no power to take action.

5. It is true that by way of the amendment, the Commissioner has no power to issue the licence. But the present case is one where the local authority (The Commissioner) has initiated action against the petitioner, who had no licence at all for having put up the construction. In such case, Section 217-J of the amendment act namely, Act 10 of 1988 applies which reads as follows:

Amendment of Section 217-J - In Section 217-J of the Principal Act, for the expression "State Government in three places where it occurs, the expression "State Government or the executive authority, as the case may be" shall be substituted.

6. Thus it is made clear that originally the state Government alone was the authority concerned, but now after amendment, the executive authority has also been given the power under Section 217-J of the Principal Act which states that as it originally stood that "The State Government may, at any time by notice in writing, direct the owner, lessee or occupier of any land in hill station---

- (a) to stop the construction or reconstruction of any building on such land; or
- (b) to stop the user of any building or land for any purpose; or
- (c) to alter or demolish, within such time as may be specified in the notice, any building or any part thereof; or
- (d) to stop the user of any agricultural land for non-agricultural purpose.

7. Therefore, by way of amendment carried out in Act 10 of 1988, the executive authority is also conferred to initiate action under Section 217-J and by virtue of this clause, the Commissioner has now taken action against the petitioner and hence I see there is absolutely no illegality committed by the complainant.

8. Hence, I am not inclined to interfere with the order passed by the learned Magistrate in dismissing the application for discharge of the accused. Accordingly, the revision is dismissed. Consequently, connected Crl.M.P is closed.

Index: yes
Internet:yes
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